



January 25, 2002

SENATE BILL No. 365

DIGEST OF SB 365 (Updated January 22, 2002 5:33 PM - DI 101)

Citations Affected: IC 6-3.1.

Synopsis: EDGE tax credits. Expands eligibility for the economic development for a growing economy (EDGE) tax credit by making the credit available for projects to retain existing jobs, as well as for projects to create jobs. Eliminates the requirement that an applicant for a job creation credit must verify that the applicant has considered locating the project in at least one other state. Allows a credit for job retention only if the taxpayer: (1) is engaged in research and development, manufacturing, or business services; (2) pays an average compensation that is at least the average compensation paid in the county; (3) plans to use the credit for facility improvements, for equipment and machinery upgrades, repairs, or retrofits, or for other direct business investments, including training; and (4) has at least 100 Indiana employees. For job retention credits, requires affected communities to match at least one dollar of local incentives for every three dollars in EDGE credits.

Effective: Upon passage.

**Long, Server, Miller, Blade, Broden,
Meeks C, Wyss, Simpson, Mrvan**

January 8, 2002, read first time and referred to Committee on Energy and Economic Development.

January 24, 2002, amended, reported favorably — Do Pass; reassigned to Committee on Finance.

SB 365—LS 6398/DI 103+



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January 25, 2002

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

SENATE BILL No. 365

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-3.1-13-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this
3 chapter, "credit amount" means the amount agreed to between the
4 board and applicant under this chapter, but not to exceed, **in the case**
5 **of a credit awarded for a project to create new jobs in Indiana**, the
6 incremental income tax withholdings attributable to the applicant's
7 project.

8 SECTION 2. IC 6-3.1-13-13 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) The board
10 may make credit awards under this chapter to foster job creation in
11 Indiana **or, as provided in section 15.5 of this chapter, job retention**
12 **in Indiana.**

13 (b) The credit shall be claimed for the taxable years specified in the
14 taxpayer's tax credit agreement.

15 SECTION 3. IC 6-3.1-13-14 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. A person that
17 proposes a project to create new jobs in Indiana may apply **as provided**

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in section 15 of this chapter to the board to enter into an agreement for a tax credit under this chapter. **A person that proposes to retain existing jobs in Indiana may apply as provided in section 15.5 of this chapter to the board to enter into an agreement for a tax credit under this chapter.** The director shall prescribe the form of the application.

SECTION 4. IC 6-3.1-13-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. **This section applies to an application proposing a project to create new jobs in Indiana.** After receipt of an application, the board may enter into an agreement with the applicant for a credit under this chapter if the board determines that all of the following conditions exist:

(1) The applicant's project will create new jobs that were not jobs previously performed by employees of the applicant in Indiana.

(2) The applicant's project is economically sound and will benefit the people of Indiana by increasing opportunities for employment **in Indiana** and strengthening the economy of Indiana.

(3) There is at least one (1) other state that the applicant verifies is being considered for the project.

(4) A significant disparity is identified, using best available data, in the projected costs for the applicant's project compared to the costs in the competing state, including the impact of the competing state's incentive programs. The competing state's incentive programs shall include state, local, private, and federal funds available.

(5) (3) The political subdivisions affected by the project have committed significant local incentives with respect to the project.

(6) (4) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project and not receiving the tax credit will result in the applicant not creating new jobs in Indiana.

(7) (5) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(8) (6) The credit is not prohibited by section 16 of this chapter.

SECTION 5. IC 6-3.1-13-15.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15.5. **This section applies to an application proposing to retain existing jobs in Indiana. After receipt of an application, the board may enter into an agreement with the applicant for a credit under this chapter if the board determines that all the following conditions exist:**

(1) The applicant's project will retain existing jobs performed



by the employees of the applicant in Indiana.

(2) The applicant provides evidence that there is at least one

(1) other competing site outside Indiana that is being considered for the project or for the relocation of jobs.

(3) A disparity is identified, using the best available data, in the projected costs for the applicant's project in Indiana compared with the costs for the project in the competing site.

(4) The applicant is engaged in research and development, manufacturing, or business services (as defined in the Standard Industrial Classification Manual of the United States Office of Management and Budget).

(5) The average compensation (including benefits) provided to the applicant's employees during the applicant's previous fiscal year is at least equal to the average compensation paid during that same period to all employees in the county in which the applicant's business is located.

(6) The applicant employs at least one hundred (100) employees in Indiana.

(7) The applicant has prepared a plan for the use of the credits under this chapter for:

(A) investment in facility improvements or equipment and machinery upgrades, repairs, or retrofits; or

(B) other direct business related investments, including but not limited to training.

(8) Receiving the tax credit is a major factor in the applicant's decision to go forward with the project, and not receiving the tax credit will increase the likelihood of the applicant reducing jobs in Indiana.

(9) Awarding the tax credit will result in an overall positive fiscal impact to the state, as certified by the budget agency using the best available data.

(10) The applicant's business and project are economically sound and will benefit the people of Indiana by increasing or maintaining opportunities for employment and strengthening the economy of Indiana.

(11) The communities affected by the potential reduction in jobs or relocation of jobs to another site outside Indiana have committed at least one dollar (\$1) of local incentives with respect to the retention of jobs for every three dollars (\$3) in credits provided under this chapter. For purposes of this subdivision, local incentives include, but are not limited to, cash grants, tax abatements, infrastructure improvements,



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investment in facility rehabilitation, construction, and training investments.

(12) The credit is not prohibited by section 16 of this chapter.

SECTION 6. IC 6-3.1-13-17 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 17. In determining the credit amount that should be awarded **to an applicant under section 15 of this chapter that proposes a project to create jobs in Indiana**, the board shall take into consideration the following factors:

(1) The economy of the county where the projected investment is to occur.

(2) The potential impact on the economy of Indiana.

~~(3) The magnitude of the cost differential between Indiana and the competing state.~~

~~(4)~~ **(3)** The incremental payroll attributable to the project.

~~(5)~~ **(4)** The capital investment attributable to the project.

~~(6)~~ **(5)** The amount the average wage paid by the applicant exceeds the average wage paid within the county in which the project will be located.

~~(7)~~ **(6)** The costs to Indiana and the affected political subdivisions with respect to the project.

~~(8)~~ **(7)** The financial assistance that is otherwise provided by Indiana and the affected political subdivisions.

As appropriate, the board shall consider the factors in this section to determine the credit amount awarded to an applicant for a project to retain existing jobs in Indiana under section 15.5 of this chapter. In the case of an applicant under section 15.5 of this chapter, the board shall consider the magnitude of the cost differential between the projected costs for the applicant's project in the competing site outside Indiana and the projected costs for the applicant's project in Indiana.

SECTION 7. IC 6-3.1-13-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. The board shall determine the amount and duration of a tax credit awarded under this chapter. The duration of the credit may not exceed ten (10) taxable years. The credit may be stated as a percentage of the incremental income tax withholdings attributable to the applicant's project and may include a fixed dollar limitation. **In the case of a credit awarded for a project to create new jobs in Indiana**, the credit amount may not exceed the incremental income tax withholdings. However, the credit amount claimed for a taxable year may exceed the taxpayer's state tax liability for the taxable year, in which case the excess shall be refunded to the taxpayer.



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SECTION 8. IC 6-3.1-13-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19. **In the case of a credit awarded for a project to create new jobs in Indiana**, the board shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the following:

- (1) A detailed description of the project that is the subject of the agreement.
- (2) The duration of the tax credit and the first taxable year for which the credit may be claimed.
- (3) The credit amount that will be allowed for each taxable year.
- (4) A requirement that the taxpayer shall maintain operations at the project location for at least two (2) times the number of years as the term of the tax credit. **A taxpayer is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.**
- (5) A specific method for determining the number of new employees employed during a taxable year who are performing jobs not previously performed by an employee.
- (6) A requirement that the taxpayer shall annually report to the board the number of new employees who are performing jobs not previously performed by an employee, the new income tax revenue withheld in connection with the new employees, and any other information the director needs to perform the director's duties under this chapter.
- (7) A requirement that the director is authorized to verify with the appropriate state agencies the amounts reported under subdivision (6), and after doing so shall issue a certificate to the taxpayer stating that the amounts have been verified.
- (8) A requirement that the taxpayer shall provide written notification to the director and the board not more than thirty (30) days after the taxpayer makes or receives a proposal that would transfer the taxpayer's state tax liability obligations to a successor taxpayer.
- (9) Any other performance conditions that the board determines are appropriate.

SECTION 9. IC 6-3.1-13-19.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 19.5. **In the case of a credit awarded for a project to retain existing jobs in Indiana**, the board shall enter into an agreement with an applicant that is awarded a credit under this chapter. The agreement must include all of the

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following:

- (1) A detailed description of the business that is the subject of the agreement.
- (2) The duration of the tax credit and the first taxable year for which the credit may be claimed.
- (3) The credit amount that will be allowed for each taxable year.
- (4) A requirement that the applicant shall maintain operations at the project location for at least two (2) times the number of years as the term of the tax credit. An applicant is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.
- (5) A requirement that the applicant shall annually report the following to the board:
 - (A) The number of employees who are employed in Indiana by the applicant.
 - (B) The compensation (including benefits) paid to the applicant's employees in Indiana.
 - (C) The amount of the:
 - (i) facility improvements;
 - (ii) equipment and machinery upgrades, repairs or retrofits; or
 - (iii) other direct business related investments, including training.
- (6) A requirement that the applicant shall provide written notification to the director and the board not more than thirty (30) days after the applicant makes or receives a proposal that would transfer the applicant's state tax liability obligations to a successor taxpayer.
- (7) Any other performance conditions that the board determines are appropriate.

SECTION 10. IC 6-3.1-13-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 24. On a biennial basis, the board shall provide for an evaluation of the tax credit program, giving first priority to using the Indiana economic development council, established under IC 4-3-14-4. The evaluation shall include an assessment of the effectiveness of the program in creating new jobs **and retaining existing jobs** in Indiana and of the revenue impact of the program, and may include a review of the practices and experiences of other states with similar programs. The director shall submit a report on the evaluation to the governor, the



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1 president pro tempore of the senate, and the speaker of the house of
2 representatives after June 30 and before November 1 in each
3 odd-numbered year.

4 SECTION 11. **An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Broden be removed as second author of Senate Bill 365.

BRODEN

SENATE MOTION

Mr. President: I move that Senator Server be added as second author and Senators Miller, Blade and Broden be added as coauthors of Senate Bill 365.

LONG

SENATE MOTION

Mr. President: I move that Senators Meeks C, Wyss, Simpson and Mrvan be added as coauthors of Senate Bill 365.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Energy and Economic Development, to which was referred Senate Bill No. 365, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 2, after "retain" insert "**existing**".

Page 2, line 3, delete "instead of relocating the jobs to another state".

Page 2, line 16, after "employment" insert "**in Indiana**".

Page 2, line 38, delete "the retention of jobs in Indiana to prevent" and insert "**to retain existing jobs in Indiana**".

Page 2, line 39, delete "the relocation of those jobs to another state.".

Page 3, line 1, delete "applicant proposes to retain jobs in Indiana that" and insert "**applicant's project will retain existing jobs performed by the employees of the applicant in Indiana**".

Page 3, delete lines 2 through 3.

Page 3, line 4, delete "verifies that at least one (1) other state or" and insert "**provides evidence that there is at least one (1) other competing site outside Indiana that is being considered for the project or for the relocation of jobs**".

Page 3, delete lines 5 through 7.

Page 3, line 8, delete "significant".

Page 3, line 9, delete "business" and insert "**project**".

Page 3, line 10, after "costs" insert "**for the project**".

Page 3, line 10, delete "state," and insert "**site**".

Page 3, delete lines 11 through 14.

Page 3, line 21, delete "one hundred twenty-five percent".

Page 3, line 22, delete "(125%) of".

Page 3, line 25, delete "two hundred (200)" and insert "**one hundred (100)**".

Page 3, line 30, delete "upgrades;" and insert "**upgrades, repairs, or retrofits;**".

Page 3, line 34, delete "not to relocate jobs to another state." and insert "**to go forward with the project, and not receiving the tax credit will increase the likelihood of the applicant reducing jobs in Indiana**".

Page 3, line 38, delete "is" and insert "**and project are**".

Page 3, line 39, after "increasing" insert "**or maintaining**".

Page 3, line 41, delete "political subdivisions" and insert

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"communities".

Page 3, line 41, after "potential" insert "**reduction in jobs or**".

Page 3, line 41, delete "state" and insert "**site outside Indiana**".

Page 4, line 2, delete "two dollars (\$2)" and insert "**three dollars (\$3)**".

Page 4, line 6, delete "and construction." and insert "**construction, and training investments.**".

Page 4, strike lines 16 through 17.

Page 4, line 18, strike "(4)" and insert "**(3)**".

Page 4, line 19, strike "(5)" and insert "**(4)**".

Page 4, line 20, strike "(6)" and insert "**(5)**".

Page 4, line 23, strike "(7)" and insert "**(6)**".

Page 4, line 25, strike "(8)" and insert "**(7)**".

Page 4, line 28, delete "that" and insert "**for a project to retain**".

Page 4, line 29, delete "retains" and insert "**existing**".

Page 4, line 29, after "chapter." insert "**In the case of an applicant under section 15.5 of this chapter, the board shall consider the magnitude of the cost differential between the projected costs for the applicant's project in the competing site outside Indiana and the projected costs for the applicant's project in Indiana.**".

Page 5, line 13, after "credit." insert "**A taxpayer is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.**".

Page 5, line 37, delete "the retention of" and insert "**a project to retain existing**".

Page 6, line 6, after "credit." insert "**An applicant is subject to an assessment under section 22 of this chapter for noncompliance with the requirement described in this subdivision.**".

Page 6, line 13, after "of" insert "**the**:"

(i)".

Page 6, line 13, delete "," and insert ";

(ii)".

Page 6, line 14, delete "and" and insert "**repairs or retrofits; or**".

Page 6, line 14, before "other" begin a new line triple block indented and insert:

(iii)".

Page 6, line 15, delete "investments." and insert "**investments, including training.**".

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Page 6, line 29, after "retaining" insert "**existing**".

and when so amended that said bill do pass and be reassigned to the Senate Committee on Finance.

(Reference is to SB 365 as introduced.)

WEATHERWAX, Chairperson

Committee Vote: Yeas 10, Nays 0.

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